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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: April 21, 2022	)	Case No.: PSH-22-0075
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Issued: August 12, 2022

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**Administrative Judge Decision**

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Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be granted.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In August 2021, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 10 at 44. The Individual disclosed on the QNSP that he had outstanding debts. *Id.* at 38–40. The local security office (LSO) issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information described above raised security concerns under Guideline F (Financial Considerations). Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eleven exhibits (Ex. 1–11) and the Individual submitted seven

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

exhibits (Ex. A–G). The Individual testified on his own behalf and presented the testimony of one other witness. Hearing Transcript (Tr.) at 3, 41–45. The LSO did not call any witnesses. *Id.* at 3.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline F (Financial Considerations) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 10–12. Guideline F provides that, “Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 18. “An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.” *Id.* The SSC cited the Individual’s extensive charge off and collection accounts and debts to the Internal Revenue Service (IRS) and his state tax authority for tax year 2018. Ex. 1 at 1–2. The LSO’s allegations that the Individual demonstrated a failure to satisfy debts and a history of not meeting financial obligations justified its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (c).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### IV. FINDINGS OF FACT

In August 2021, the Individual listed two outstanding debts on his QNSP. Ex. 10 at 38–40. After a background investigation revealed that the Individual had more outstanding debts<sup>2</sup> than he listed on the QNSP, the LSO sent the Individual a Letter of Interrogatory. Ex. 9; Ex. 8. In the response to the letter, the Individual asserted that he started a business that was not successful. *Id.* at 9; Tr. at 63. He also indicated that, after he closed the business, he had a low paying job. The Individual also indicated that his partner was responsible for paying the accounts but did not. She subsequently declared bankruptcy leaving the debts to be paid by the Individual. Ex. 9 at 9. The Individual’s partner, who testified at the hearing, confirmed that she had declared bankruptcy at least three years prior to the hearing. She stated that she satisfied one of the debts listed on the SSC. Tr. at 42.

The Individual claimed that he incurred a substantial tax debt of \$10,000 because his accountant was not filing all the necessary paperwork related to his business. Ex. 8 at 3. At the hearing, the Individual testified that he had a trucking business with his partner, but due to the economy they sold the truck. Tr. at 63. The credit cards were used to keep the trucking business alive. *Id.* Both he and his partner were responsible for paying the bills, but when his partner declared bankruptcy, she left the bills for him to pay. *Id.* at 42. He testified that he did not have a job to pay those bills at the times they were due, but once he became employed at the DOE contractor, he sold a car and liquidated his 401K to have enough money to begin paying his outstanding bills. *Id.* at 63.

The Individual submitted evidence showing that he paid many of his outstanding debts prior to the hearing. Exs. A–E. The Individual provided a copy of his bank statement. Ex. E at 1–23. The bank statement signals that many of his outstanding bills were paid prior to the hearing. Ex. E at 6, 10, 11, 12, 13, 16, 17, 21, 22. Included in his exhibits, the Individual presented evidence that he has a payment plan with the IRS and has paid his state tax debt. Ex. A at 18–19. His bank records show that he has been adhering to the payment plan with the IRS. Ex. E at 13, 16, 21. He also indicated that prior to establishing the payment plan with the IRS, he was repaying his debts by applying his refund to the overdue amount. Ex. 9 at 11. He provided a copy of his current credit report, which indicated that he has no present outstanding debts and shows a four-year perfect payment record. Ex. C; Ex. E at 23–81. At the hearing, the Individual indicated that he has been unable to satisfy two of the debts,<sup>3</sup> one because he could not get any information about the debt, and the other because it had “slipped through the cracks” of his attempt to pay all his debts prior to the hearing. Tr. at 27, 29. After the hearing, he provided evidence that one credit card debt that he had missed was settled and successfully closed, and that he could not find any information on the collection agency to which the other debt was sent.<sup>4</sup> Ex. F; Ex. G.

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<sup>2</sup> These debts included five credit cards and one automobile loan that were charged off and three credit cards and three medical debts that were in collection. Ex. 1 at 1. One of the debts listed on the SSC as being in collection was also listed as a charge off account. Tr. at 34.

<sup>3</sup> There was no evidence presented at the hearing why these two debts did not appear on his credit report.

<sup>4</sup> Specifically, the Individual stated that he had contacted the creditor, which stated that the account was charged off and had been sent to a collection agency. The creditor’s representative had no information on the collection agency. Ex. F.

The Individual submitted a monthly budget to the LSO in December 2021, which showed that he had a deficit each month of almost \$500. Ex. 7. However, in response to the Notification Letter, the Individual provided a second budget, which showed a surplus of almost \$400 per month. He explained that the difference was related to his salary being higher than his earlier budget estimated and his expenses being lower than his earlier budget estimated.<sup>5</sup> Ex. 2 at 2, 4. The Individual concluded his testimony by stating that he is current on all his loans and credit cards. Tr. at 64. This fact is supported by his credit report. Ex. E at 23-81.

## **V. ANALYSIS**

The LSO raised security concerns under Guideline F. The concerns justify the LSO's invocation of Guideline F.

Regarding the security concerns raised under Guideline F, the Individual has made significant advances in paying his numerous outstanding debts. Guideline F lists seven conditions that could mitigate a concern raised by financial irregularities:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and

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<sup>5</sup> The second budget included his payment to the IRS and two other outstanding debt payments, that he has since paid in full. Ex. 2 at 3.

(g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20(a)—(g). I find that the Individual has mitigated the concerns raised by his outstanding debts. As evidenced by the Individual's credit report, he is current on all his outstanding bills and the credit report shows that he has a four-year perfect payment record on his open credit accounts. At the hearing, he testified that he had paid all but two of the outstanding debts listed on the SSC. After the hearing, he provided evidence that he has settled one of those debts and has tried to obtain payment information for the second debt, with little success. Given his number of outstanding debts, either in collection or charged off, the Individual has exerted significant effort in satisfying these debts. With regard to the one debt that remains outstanding, the Individual has initiated a good-faith effort to repay this overdue liability. He has contacted the creditor in attempt to get information on the collection agency to which the debt was transferred. According to the Individual, the creditor's representative indicated that it would contact him with the collection agency's name to which the debts has been sold. Ex. F. Accordingly, with respect to all of the debts, I believe the Individual demonstrated that he has "initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," thus satisfying the mitigating condition set forth in subparagraph (d). Further, with respect to his tax debts, the Individual has a payment plan with the IRS and has paid his state tax debt. In response to the SSC, he explained that he was paying his IRS and state tax debts, both of which were for tax year 2018, by applying his refunds from the following years. Ex. 9 at 11. Subsequently, the Individual submitted an exhibit which indicated that he now has a payment plan with the IRS and that he is following that plan. He also provided evidence that he has paid his state tax liability. As such, per the mitigating condition at subparagraph (g), "[t]he Individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements."

The Individual asserted that his financial difficulties resulted from a failed business and his partner declaring bankruptcy. His partner confirmed her bankruptcy. The Individual's indebtedness resulted from his failed business, which occurred several years prior to the hearing, and subsequent low-paying job. I believe this satisfies subparagraph (a) above. The behavior happened over four years prior to the hearing, and although he did not satisfy his debts until just prior to the hearing, he is in a better financial situation now than he was when the financial difficulties began. Further, his financial difficulties occurred under the circumstance of a failed business, which is unlikely to recur since he is in stable employment. Therefore, the indebtedness, which the Individual has now resolved with the exception of one outstanding debt, does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. For this reason, I find that the Individual has mitigated the security concerns raised under Guideline F.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline F of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns under

Guideline F. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual should be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R.H. Fishman  
Administrative Judge  
Office of Hearings and Appeals